

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6638 OF 2000

Shri Madhu S. Sadlapurkar
resident of 536, Nehru Chowk,
Serpan Galli, Bhingar, Ahmednagar ...Petitioner

Vs.

1. Union of India (through)
The Chief of Army Staff, Sena Bhavan,
DHQ P.O., Army Headquarters,
New Delhi 110 011.

2. The Commandant, A.C. Centre &
School, Ahmednagar 0 414002. ...Respondents

.....
Mr. A.S. Rao i/by Mr. S.P Saxena, Advocate for the petitioner.
Mr. Rui Rodrigues along with Mr. D.A. Dubey, Advocate for
respondent No.1/UOI.

.....
CORAM : SMT. V.K. TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.

DATE : 30th JANUARY, 2018.

JUDGMENT (PER M.S.KARNIK, J.) :-

The petitioner by this petition filed under Article 226 and 227 of the Constitution of India challenge an order dated 29th February, 2000 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai ('the Tribunal' for short) in O.A. No.832 of 1998.

2. Brief facts of the case are as under :-

Sometime in 1966 the petitioner was employed by the Commandant, A.C. Centre and School, Ahmednagar as a watchman. In March, 1983, the petitioner was issued charge-sheet for unauthorized absence for 21 days in February and March, 1983. In August, 1983, the petitioner was issued another charge-sheet for unauthorized absence of 81 days between 16/3/1983 and 31/7/1983. Pursuant to disciplinary inquiry the petitioner was imposed penalty of removal from service with effect from 29/11/1983. The petitioner filed an appeal before the appropriate authority. The petitioner filed O.A.No.973/1992 before the Tribunal which was disposed of by directing the respondent to decide the petitioner's appeal at the appropriate level and while doing so to consider the petitioner's case in the light of the judgment of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Dharam Singh, 1997 SCC (L&S) 576**. By an order dated 23/6/1998, the petitioner's appeal was disposed of by the appropriate authority and the order of removal from service was confirmed. The petitioner approached

the Tribunal by filing O.A.No. 832 of 1998 which came to be dismissed by the impugned order.

3. We have heard learned Counsel for the petitioner. We are not inclined to interfere with the findings of the Tribunal as regards the procedure adopted by the disciplinary authority coming to the conclusion that the charges levelled against the petitioner stand proved.

4. We may refer to the details of the absence period in the second charge-sheet for which he came to be charge-sheeted:-

<u>From</u>	<u>To</u>	<u>No of days</u>
16 Mar, 83	21 Mar, 83	6
23 Mar, 83	31 Mar, 83	9
01 Apr, 83	08 Apr, 83	8
12 Apr, 83	16 Apr, 83	5
23 Apr, 83	30 Apr, 83	8
01 May, 83	31 May, 83	31
01 Jun, 83	03 Jun, 83	3
06 Jul, 83	07 Jul, 83	2
23 Jul, 83	31 Jul, 83	9
Total		----- 81 -----

5. It would be pertinent to note the observations of the Tribunal in O.A.No.973 of 1992 while remitting the matter back to the appellate authority for passing a speaking order :-

“ The Scope of interference by this Tribunal regarding the punishment is also very limited. However we notice that there is no other allegation of mis-conduct of the applicant except absence for 81 days which was the subject matter of the charge sheet. The question whether the case of removal from service is a matter which has to be decided by the Appellate Authority, taking into consideration the status of the applicant namely he is Group 'D' official of the rank of Watchman and he is an illiterate person. He has to take a decision whether mere absence for 81 days without any other mis-conduct calls for such a excessive punishment or it can be substituted by penalty of compulsory retirement. It is for the Appellate Authority to examine the facts and circumstances of the case and award whatever punishment as provided under the Rules. Since the Appellate Authority has not passed any order we remit the matter to the Appellate Authority to pass appropriate order both on merits and regarding the punishment. If the Appellate Authority decides the case on merits and accepts applicant's case then he has to set aside the punishment and reinstate the applicant in service. If the Appellate Authority does not decide to accept the case of applicant on merits, then he has to decide what is the proper punishment in the light of the observations made. Then he can pass appropriate order regarding the punishment. In case he come to the

conclusion that compulsory retirement would meet the ends of justice then the question is whether the applicant should be entitled to arrears of pension from 1983 till today. As rightly argued on behalf of the respondents there is an inordinate delay on the part of the applicant in approaching this Tribunal both on first occasion and also on the second occasion. In the circumstances we feel that the applicant would not be entitled any arrears of pension or other benefits from 29.11.83 till the date of filing the present application i.e. on 5.9.92. If at all he would be entitled to monetary benefit from 5.9.92, if the Appellate Authority comes to the conclusion that the compulsory retirement is proper punishment. The matter is fully left to the discretion of the Appellate Authority to pass appropriate order in the peculiar facts and circumstances of the case.”

6. Pursuant to the remand, as indicated earlier the appellate authority was pleased to dismiss the appeal. The Tribunal by the impugned order also did not interfere with the order passed by the appellate authority.

7. Only question that arises for consideration is whether the punishment of removal from the service is disproportionately excessive so as to shock the judicial

conscience in the facts of the present case.

8. Learned Counsel for the petitioner relied upon the decision of the Apex Court in the case of **B.C. Chaturvedi Vs. Union of India and others** reported in (1995) 6 SCC 749. A profitable reference can be made to para 18 of the decision in **B.C. Chaturvedi** (*supra*) which reads thus :-

“ 18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases. impose appropriate punishment with cogent reasons in support thereof.

9. In the earlier round of litigation before the Tribunal while deciding O.A.No.832 of 1998 and as can be seen from para quoted hereinbefore from the Tribunal's judgment, the Tribunal had directed the appellate authority to decide what should be the 'appropriate punishment' in the light of the observations made. The Tribunal further observed that if the appellate authority came to the conclusion that the compulsory retirement would meet the ends of justice, the question whether the petitioner is entitled to arrears from 1983 till today was left to the discretion of the appellate authority.

10. The appellate authority by order dated 22nd June, 1998 was pleased to reject the appeal. Though the Tribunal had left it to the appellate authority to examine the facts and circumstances of the case and award whatever punishment as provided under the Rules but we find that the appellate authority has mechanically rejected the appeal without giving due consideration to the observations made by the Tribunal. We do not find it appropriate to remit the matter to the appellate

authority again for considering the aspect of quantum of punishment again at this stage.

11. Undoubtedly for the proved misconduct it is very well settled that this Court in exercise of review power cannot interfere with the punishment imposed by the disciplinary authority/appellate authority except when it shocks the judicial conscience in which case this Court may mould the relief either by directing the authority to reconsider the punishment/penalty imposed or in exceptional cases by itself imposing appropriate punishment recording cogent reasons.

12. In the present case, we find that the petitioner had worked from 1966 to 8th December, 1983 during which time he rendered satisfactory services. The period of absence is 81 days between 16/3/1983 and 31/7/1983. The appellate authority's order does not record anything about past service of the petitioner. The Tribunal while remitting the matter back to the appellate authority by its order passed in O.A.No. 973/1992 had

indicated that in case the appellate authority comes to the conclusion that compulsory retirement would meet the ends of justice then the question is whether the petitioner would be entitled to arrears of pension from 1983. The Tribunal had observed that there is an inordinate delay on the part of the petitioner in approaching the Tribunal and therefore indicated that the petitioner would not be entitled any arrears of pension or other benefits from 29/11/1983 till the date of filing the O.A.No.973/ 1992 i.e. 5/9/1992, if the appellate authority comes to the conclusion that the compulsory retirement is proper punishment.

13. Having regard to the law laid down by the Apex Court the Tribunal in the earlier round of litigation rightly directed the appellate authority to reconsider the penalty imposed. As indicated earlier the appellate authority did not consider the question of reduction of penalty in the light of the order passed by the Tribunal. We do not even find a passing reference to the observations of the Tribunal. The respondents

also did not file any petition challenging the order passed by the Tribunal dated 26th February, 1998 in O.A.No. 973/1992 in which the Tribunal had directed the appellate authority to decide what is 'proper punishment' in the light of the observations made. The Tribunal had clearly observed that the case of removal of the petitioner has to be decided by the appellate authority taking into consideration the status of the petitioner namely he is Group 'D' official of the rank of Watchman and he is an illiterate person. The Tribunal directed that the appellate authority had to take a decision whether mere absence for 81 days without any other mis-conduct calls for such an excessive punishment or it can be substituted by penalty of compulsory retirement. The Tribunal had rightly left it to the appellate authority to examine the facts and circumstances of the case and award whatever punishment is appropriate as provided under the Rules.

14. It is thus clear that the appellate authority had to consider the proportionality of the punishment as per the

observations of the Tribunal which it has failed to do. We have already indicated that it would not be appropriate to remit the matter back to the appellate authority at this stage. The appellate authority has only observed that the petitioner is habitual defaulter without there being any details on record. In a case of absence of 81 days without any other misconduct the disciplinary authority would well have been justified in imposing a lesser punishment than removal from service. In our opinion, the punishment of removal imposed by the disciplinary authority on the petitioner is shocking and disproportionate in the facts and circumstances of the present case. In order to shorten the litigation and instead of again remitting the matter back to the appellate authority, we are of the opinion that the penalty of removal can be substituted with the penalty of compulsory retirement.

15. In the light of the observations made by the Tribunal that there has been a delay on the part of the petitioner in approaching the Tribunal in the first instance, in our opinion

though the Tribunal had observed that the petitioner would not be entitled to any arrears of pension or other benefits from 29/11/1983 till the date of filing the O.A.No.973/ 1992 i.e. 5/9/1992, we feel the ends of justice will be met if the petitioner is granted pensionary benefits from 23/6/1998 viz. the date of the appellate authority's order. Hence, the following order :-

ORDER

- (i) The order of removal passed by the Disciplinary Authority is substituted with the penalty of compulsory retirement from service.
- (ii) The petitioner is not entitled for any arrears of pension from 29/11/1983 upto 23/6/1998.
- (iii) The petitioner is entitled to pensionary benefits as per the rules from 23/6/1998 onwards.
- (iv) The arrears of pension may be paid to the petitioner

within a period of three months from today along with terminal benefits.

16. The Writ Petition is partly allowed.

17. Rule is partly made absolute with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)